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Subject:— Opinions under the Treasurer of Charitable Endowments.

File No. O. Charities/49

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C O N T E N T S.

Legal Department File No. O. Charities / 49.

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24-8-48.

Submitted.

2. The history of the David Sassoon Industrial and Reformatory Institution is stated in H.D's note on pages 67-83 in H.D. file No. 1423/4-VI and reviewed in R.L.A.'s opinion on pages 85-89 in the same file. Briefly the facts are that in 1857 the Sasson famil offered their premises at Chunam Kiln (now Lamington Road) and an endownment of Rs. 30,000, for the purpose of a Reformatory Institution on certain conditions; one of them being that "Government permit the School to be called "The David Sassoon Reformatory Institution." In 1912 the Chunam Kiln property was sold with the sanction of the High Court, and the Reformatory school was transferred to Matunga where it is located today. G.R.E.D. No. 264 dated 29-1-1943 in this behalf provides that "The Governor in Council is pleased to declare that the land at Matunga measuring 35,538 sq. yards or thereabouts and the buildings already erected thereon which are now used as an Industrial and Reformatory Instituion, will be held by Government in trust for the purpose of such Institution under the name of the David Sassoon Industrial and Reformatory Institution". Government have now approved of a scheme put forth by Mr. Bhatt, Chairman, of the Children's Aid Society, Bombay under which the Remand Home at Umarkhadi would be shifted to the present premises of the David Sassoon Industrial and Reformatory Institution

which in turn would be shifted to Chembur where new buildings for the Institution would be built. It is stated in the H.D. note on pp. 49-50 ante that:

"It will be seen from the above that the land and buildings of the school are held by Govt. in trust for the school under the name of the D.S.I. & R. Institution".

The conditions underlying the offer of the ~~Sassons in transfer of the school~~ Sassons in 1857 mentioned above do not prohibit the transfer of the school to any other premises and it appears that ther is no legal bar to shifting the school to Chembur. As re: the name of the school however cannot be changed except with the approval of the High Court in the form of a decree as was given on 15-12-1913."

The papers are referred to the R.L.A. for advice in this matter.

Please see U.R. to H.D. No. 276. dated the 18th January 1959

EVY. 24/8.

Office of the R.L.A?

Civil Procedure Code. Section 92. David Sassoon Industrial and Reformatory Institution.

Change of name and site.

It appears clear from Government Resolution, Educational Department, No. 264 dated the 29th January 1913 and the High Court decree in suit No. 1137 of 1912 that the premises of the David Sassoon Industrial and Reformatory Institution at Matunga are held in trust by Government. If that Institution is to be now shifted to new premises at Chembur and its premises at Matunga are to be used as a Remand Home, the sanction of the High Court would be necessary. The sanction of the High Court would also be necessary if the name of the Instituion is to be changed.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 276, dated the 18th January 1949.

EVY. 24/8.

"The Jacob Sassoon European General Hospital" Poona.

Reservation of beds for Jews, Europeans and Anglo-Indian in

Reading Government Resolution No. 3891 of 1906 dated 2nd July 1906 with the letter of Mr. Jacob Sassoon dated the 29th October 1905, offering the donation of Rs. 1,50,000 for constructing a modern up-to-date hospital, it is clear that the donation was made and accepted subject to the following conditions that "the building be named the Jacob Sassoon European General Hospital", that it should contain 42 beds, 10 of which should be reserved for Jews, who should be provided with Jewish diet and for that purpose a separate cook room should be provided and that a tablet should be inscribed in English, etc." The fact that the hospital was to be named as the Jacob Sassoon Euripean General Hospital clearly indicates that the hospital was primarily meant for Europeans, subject to one condition that, out of the 42 beds provided in that hospital, 10 should be reserved for the Jews. Consequently, it would not be possible for Government without committing a breach of trust to disallow accommodation of the Europeans in this hospital. It appears that somehow or other a practice has grown of allowing even the Anglo-Indian patients in this hospital along with the Europeans and this is borne out by the statement in the Vesting Order dated the 28th September 1932 made under the Charitable Endowments Act, 1890, that "as the Jewish patients are accommodated at the said hospital with Europeans and Ango-Indian patients, the latter will also share in the said benefits". Anglo-Indians cannot be

trated as Europeans at all and nowhere in the letter of offer of the donation or in any of the subsequent correspondence between the donor and Government is it stated that the Anglo-Indians would be entitled to the same privilege as Europeans for admission in this hospital. Obviously therefore the admission of Anglo-Indians in this hospital was unauthorised. It is stated in Halsbury's Volume IV at page 188 thus: "Evidence is not admissible to contradict an express trust or to sanction a breach of trust or to show the sense in which the words were used by particular individuals other than the authors of the trust in question". Consequently, the practice hitherto followed of allowing Anglo-Indians in this hospital cannot be as authorised when obviously such admission involves a breach of trust. No doubt 32 beds in this hospital will have to be made available to Europeans but, if there is no possibility of Europeans taking the benefit under the trust, it will be feasible for Government to apply to the Court to have the hospital, (excluding the 10 beds for Jews), thrown open to the general public on the ground that the donor's direction has become impracticable for want of sufficient number of European beneficiaries (see R.L.A.'s opinion No. 7199 dated 30-7-48).

Sd/-

Remembrancer of Legal Affairs.

U.R. to H ^ L.G.D. No. 839, dated the 24th January 1949.

EVY. 24/8.

L.D.R.I. No. 688 dt. 17-1-49.

Subitted with reference to the Chief Secy's note at p. 18 ante.

It appears that a Peace Celebration Committee Fund was raised by a Committee immediately after the first World War, and the late Sir Phiroze Sethna was one of the members of the committee. It seems that a suggestion had been made that the balance in the a/m fund should be made over to the Trustees of the Bombay Presidency War and Relief Fund for amalgamation with the latter Fund. There is however no indication to show that it was so amalgamated. It is also not known for what purpose the Peace Celebration Fund was started or how the amount of the fund was proposed to be invested and expended. After the death of Sir. P. Sethna, his brother Mr. H.C. Sethna found amongst his papers, a Pass Book of the Central Bank of India Ltd. with a balance of Rs. 5,200/- to the credit of the Peace Celebration Committee and also 4 pieces of 3½ % Govt. papers of 1900/-, of Rs. 25,000/- each, bearing Nos. B 213563/3566 and each marked as belonging to "Peace Celebration Committee" framed after the first World War of 1914.

The question for R.L.A.'s consideration is whether Govt. can accept the above named amount standing to the credit of the "Peace Celebration Committee" and utilise it for a beneficial public purpose without going to the High Court and asking for its permission to allow Govt to divest the purpose for which the amount was originally collected from the public.

(Paras 4 to 11 are cancelled.)

'It is not advisable for Govt. to accept the amount and utilise it for any beneficial public Purpose without obtaining the sanction of the High Court.'

It will be possible for the Advocate-General to file a suit against Mr. Homi Sethna, who presumably is the administratory of the estate of the late Sir Phiroze Sethna, for the recovery of the amount and for declaration of trust and for framing a scheme. Mr. Homi Sethna need not necessarily be a contesting party but may hand over the securities to the Advocate-General at the time of the hearing of the suit. However, the Advocate General is of opinion that before he can apply to the Court, it is essential that some more information about the Committee, the funds collected by it, and particularly the purposes for which such funds are were collected, is necessary for being incorporated in the application. It may perhaps be possible for P. & S.D. to obtain some more information required by the Advocate General from Senior Public men like Sir Cowasji Jehangir, (Sir Suleman Cassum Mitha) or Sir Rahimtulla Mehrally Chinoy.

U.R. to P. & S.D. No. 3531 dated 1-4-1949.
Please see R.L.A's opinion No. 10619
dt. 20-9-49.

EVY. 24/8.

~~Zoroastrian in view and not an Irani.~~

From the letter of the Suregeon General, No. S-182-B dated 5-10-1932, it will be clear that the Grant Medical Coolege Council accepted the donation of Rs. 10,000/- from Shirinbai A. Mehta" for the institution of a scholarship to be awarded out of the interest accuring from the amount of donation to a Parsi Student (male of female) in the Grant Medical College, who has obtained highest number of marks in the final M.B.B.S. Examination and who is desirous of presenting higher studies and obtaining higher degrees in the medical line." Clause 2 of the draft Schedule referred to in G.R.G.D. No. 9397, dated 17-7-1933 provides that "only students of the Parsi Zoroastrian Community shall be eligible for the Scholarship" (see also condition e 3 of G.R.G.D. No. 9397, dated 25-10-32). The Irani girl who has secured the highest marks in the final M.B.B.S. Examination states that she is an Irani student. On her own admission, it is clear that in strict sence of the term, she is not a student "of the Parsi Zoroastrian Community" under the terms of G.R.G.D. No. 9397, dated 25-10-32. The term "Parsi" as defined in section 2(7) of the Parsi Marriage and Divorce Act, 1936, means a "Parsi Zoroastrian". Consequently, an Irani student who is not included in the category of "Parsi Zoroastrian Community" would not be eligible for the scholarship under condition 3 of G.R.G.D. No. 9397, dated 25-10-32.

p. 23 of G.D. file 9397.

p. 25 of G.D. file 9397

pp. 9-11 of G.D. file 9397.

vide p. 3 ante.

Please see page 65.

No. 5097 .

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 10th May 1949.

To

The Surgeon General,
with the Government of Bombay,
Bombay.

Re: Award of Dr. Motibai Rustomji Kapadia
Scholarship to an Irani student.

With reference to your letter No. S 291/9868/PWR dated the ~~5h~~ 24th March 1949 on the subject noted above, I have the honour to observe as under-

According to the conditions of the trust the scholarship has to be given only to a student of the Parsee Zoroastrian Community. A Parsee and an Irani both may follow the Zoroastrian religion; still there seems to be distinction between them for the former is a descendant of those who originally settled chiefly in Western India in the Bombay Presidency while the latter is not such descendant. Since the conditions of the trust have to be strictly construed, it would not be legally open to the trustee to grant the scholarship to an Iranian Zoroastrian. The view taken by Principal Grant Medical College in his letter at page 5 antea is correct.

Papers accompanying your letter under reference are returned herewith.

Sd/-

Remembrancer of Legal Affairs.

Through
Health and Local Government Department.

EVY. 24/8.

In England the general principle is that, where there is a general indefinite purpose not fixing itself upon any object, the disposition is in the King by sign-manual, but where the execution is to be done by a trustee with general or some objects pointed out, there the court will take the administration of the trust. The rule, therefore, is where the doner erected a trust the court has jurisdiction, if the circumstances require, to direct the purposes to which the gift shall be applied, but where no trust was intended this power belongs to the Crown.

The difficulty in the present case is that all the facts and particulars about the Peace Celebration Committee are not available. Further it is doubtful whether in India the functions of the Crown in relation to charity devoke upon the execution Govt.

The proper course would, therefore, be to inform the Executers of Sir Pheroze Sethana that they should apply to Govt. under the provisions of the charitable Endowments Act, 1890 to have the funds vested in the Treasured of charitable Endowments and to have a scheme proved specifying the purposes of the fund. However, is the interesting the Executors themselves, they should apply to the Court as constructive trustees under Sec. 7 of the charitable and Religions Trusts Act, 1920 for the opinion advice and ~~deels~~ directions of the Court as to the proposed course.

Sd/-

R.L.A.

U.R. to P. & S.D. No. ~~1089~~- 10619 dt. 20-9-1949.

EVY. 24/8.